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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,369	08/29/2001	Ahmad Yekta	1191/IH584-US1	9064

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EXAMINER

NILAND, PATRICK DENNIS

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/943,369	<b>Applicant(s)</b> YEKTA ET AL.	
	<b>Examiner</b> Patrick D. Niland	<b>Art Unit</b> 1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**P riod for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-23, and 27 are rejected under 35 U.S.C. 102(a) as being anticipated by US Pat. No. 6485703 Cote et al..

Cote discloses the instantly claimed composition at the abstract; column 6, lines 9-67; column 7, lines 45-47, which will necessarily give a viscosity change with pH change and/or with temperature change; column 8, lines 27-44; and the remainder of the document. The polymers will be amorphous and are therefore liquid by definition. Column 9, lines 55-65 falls within the scope of the instant claims 8-9. The mixture will necessarily be placed into an instrument's container, which falls within the scope of the instant claims 13-23 and 27.

4. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6485703 Cote et al. in view of US Pat. No. 6077669 Little et al..

Cote discloses the instantly claimed composition at the abstract; column 6, lines 9-67; column 7, lines 45-47, which will necessarily give a viscosity change with pH change and/or with temperature change; column 8, lines 27-44; and the remainder of the

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document. The polymers will be amorphous and are therefore liquid by definition.

Column 9, lines 55-65 falls within the scope of the instant claims 8-9. The mixture will necessarily be placed into an instrument's container, which falls within the scope of the instant claims 13-23 and 27. It would have been obvious to one of ordinary skill in the art to use the HASE polyurethanes of the instant claims because they are well known, commercially available hydrogel forming polymers and the patentee encompasses such polyethylene oxide based hydrogel forming polymers at column 6, lines 9-12 and 17-21. It would have been obvious to one of ordinary skill in the art to calibrate an instrument using these mixtures because the ordinary skilled artisan would recognize that the reading of the mixture without analyte must be determined to compare it with analyte containing material so that a meaningful value can be assigned to the analyte containing reading. This would be calibration or standardization and is discussed at column 8 of Little et al.. It would have been obvious to one of ordinary skill in the art to use ammonia gas to achieve whatever the desired pH should be because this is a well known manner to affect pH and would be readily applicable to the systems of Cote.

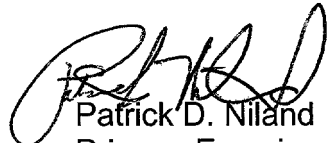
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 703-308-3510. The examiner can normally be reached on Monday to Friday from 10 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone

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number for the organization where this application or proceeding is assigned is (703)  
872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Patrick D. Niland  
Primary Examiner  
Art Unit 1714